

Editorial #5: On Planet Earth and Beyond

Nesa Zimmermann

2021-05-03T10:47:37

In our last editorial, my colleagues have [reflected](#) upon some recent evolutions on the Völkerrechtsblog, such as the diversification of our communication methods and the increased publishing pace. While not without its challenges, this evolution has allowed us to cover an extremely diverse range of topics across different fields of public international law, many of them linked to emblematic news items, others mirroring major current challenges of global politics or public international law. April 2021 is a striking example of this evolution, as the following review of this month's contributions shows.

Be prepared next time: pandemic law-making and the right to science

As of today, my region, the canton of Neuchâtel in Switzerland, [is set to open up](#) vaccination against Sars-CoV-2 (Covid-19) to everyone over 16 years old. How many people will be vaccinated, however, is another question, depending both on the availability of vaccines and the willingness of people to vaccinate. In [light](#) of [anti-vaccine sentiments](#), the question of mandatory vaccinations is looming large. As [Spyridoula Katsoni](#) shows, the ECtHR judgment [Vav#i#ka and others v. Czech Republic](#) provides some guidance on the matter, indicating that a mandatory vaccination policy against Sars-CoV-2 would probably be compatible with the ECHR. When speaking about vaccines, it is not possible to address this question without speaking of equitable distribution and so-called "[vaccine nationalism](#)". This question, along with the [emerging human right to science](#), has featured prominently on the blog last month with the [Symposium](#) on Covid-19 and "New" Human Rights. It is taken up again this month by [Pedro Villarreal](#) in his article on pandemic law-making, where he explores the possibility of an international [treaty](#) for pandemic preparedness. The link between scientific knowledge and law-making was equally emphasised in this month's short [interview](#) with Roman Schmidt-Radefeldt, invitee of the [Völkerrechtslunch – Your career in international law](#) series.

The international community in conflicted times

With the ubiquitous pandemic talk, it is easy to lose sight of other political events, as was the case of a fitness instructor in Myanmar, famously [oblivious](#) to the [military coup](#) taking place right behind her. Ever since, the situation has been [dire](#) in Myanmar, where civilian protests are still [on-going](#). In their article, [Fiza Lee-Winter, Tonny Kirabira and Laura Collins](#) analyse the situation from a human-rights perspective, providing an interesting complement to legal assessments on [other blogs](#).

When talking about forgotten conflicts, Syria comes to mind, having been "[reduced to a footnote](#)" [ten](#) years after its outbreak in 2011. In Germany, the Syrian conflict

continues to make [headlines](#) due to the al-Khatib trial in Koblenz, the [first-ever](#) trial on state torture in Syria, that started in 2020. In her article, [Merlina Herbach](#) critically assesses the trial, which has already [featured](#) on the blog before, for example in relation to the question of enforced disappearance, an estimated 99'000 having been [forcibly disappeared](#) during the Syrian conflict.

Due to the conflict, millions of Syrians have been forced to [flee](#) their homes, with an [estimated](#) 6.7 million displaced persons and 6.6 million refugees, the overwhelming majority of which are being hosted in countries near Syria. While there is much to be said about the international community's [response](#) to the Syrian refugee 'crisis', this month's contributions approach refugee law from a different perspective, going back to the adoption of the [1951 Refugee Convention](#), discussing notably strategic interests influencing the negotiation process in 1951 (see [here](#), [here](#) and [here](#)). The contributors lay a particular focus on eurocentrism in the adoption process and the interests of non-European countries at stake. The contributions are part of the [symposium](#) marking the 70th anniversary of the 1951 Refugee Convention.

Human rights from an institutional perspective: shedding light on the growing trend of interstate applications

Human rights have figured prominently on the blog this month, mainly thanks to the [Symposium](#) on interstate applications before the ECtHR led by my colleague Justine Batura and guest-editor Isabella Risini, featuring speakers from the high-level [Conference](#) on *Inter-State Cases under the European Convention on Human Rights – Experiences and Current Challenges*. The symposium was an interesting opportunity to reflect critically upon the [growing trend](#) of interstate applications, with ten sets of cases currently [pending](#) before the Court. The recent Grand Chamber judgment in [Georgia v. Russia II](#), critically reviewed by [Kanstantsin Dzehtsiarou](#) and [Mariam Bezhanishvili](#), further emphasises the timeliness of the topic.

The symposium, which has been [presented](#) in detail elsewhere (see the [introductory](#) and [concluding remarks](#)), offers critical perspectives on this phenomenon, addressing for example the question whether the growing number of interstate applications [represents](#) a thread to the individual complaint mechanism, echoing similar concerns [voiced](#) in link with the “constitutionalization” of the ECtHR. The symposium also deals with the crucial question of fact-finding, which has been [described](#) as one of the main challenges in interstate applications (see [here](#), [here](#) and [here](#)). One of the questions raised is whether new technologies could enhance and facilitate fact-finding: similar questions have been [discussed](#) on the blog before, in the context of enforced disappearance. Another set of contributions clusters around the question of friendly settlements ([here](#), [here](#), [here](#) and [here](#)). Other contributions [propose](#) practical measures on how to deal with interstate applications in a timely manner or [address](#) the question of interim measures, particularly important in view of the [recent criticism](#) of the Court's decision to grant interim measures in two cases [relating](#) to the Nagorno-Karabakh conflict, discussed in more detail by [Sylvia Maus](#) analysing the question of cultural genocide. While clearly centred on the ECtHR, the Symposium also looks beyond the confines of Europe, [discussing](#) the political and institutional limits to interstate applications in the

African human rights system and drawing inspiration from the Inter-American human rights system ([here](#) and [here](#)).

Planet Earth: new developments in environmental rights

Climate change and the state of our planet is not only a topic of great actuality, it is also increasingly seen as a legal topic. Several contributions this month reflect this evolution. Several of our editors have led an interview with [Philippe Sands](#) on a draft definition on Ecocide, which could be included in the [Rome Statute](#). The Commissioned by the initiative [StopEcocide](#), the expert drafting [panel](#) is supposed to publish its proposal in late June. Another extremely interesting civil society initiative in environmental matters is the [“Everyone” initiative](#), which has been discussed by [Remo Klinger](#). It proposes to introduce [six new rights](#) in the European Charter of Fundamental Rights, one of which being the right to a healthy environment, another providing standing to “any human being” to introduce a complaint in case of systematic human rights violations.

In more traditional law-making, several proposals on due diligence obligations intending to protect human and environmental rights in the supply chain are currently under discussion, on the [European](#) and on the national levels. While a popular initiative has been recently [rejected](#) in Switzerland, in Germany, a Draft law is currently under review. [Nora Jauer and Justine Batura](#) have discussed the [Draft law](#) on the very same day of its [first reading](#) in the German parliament. It remains to be seen whether their article will inspire lawmakers.

Finally, defending the environment is a risky, and sometimes deadly, endeavour in some parts of the world (see [here](#) and [here](#)). Their situation is particularly difficult in the face of a [shrinking civic space](#), including in liberal democracies, and legislations on [“ecoterrorism”](#). However, the important contribution of environmental defenders, and the risks they are facing, are increasingly [recognised](#), as the *Right to defend human rights* is [gaining](#) momentum. [Natalia Urzola Gutiérrez](#)’ article, the closing article on the [Symposium](#) on Covid-19 and “New” human rights, provides interesting insights into this topic.

Between the Heavens and the Deep Blue Sea

Beyond planet earth is the sky – or, as some more prosaically-minded people call it, space. After a much-noticed [article](#) on Mars not being a legal vacuum, [Cristian Van Eijk](#) is back and invites us to look up to the heavens. He explains why space law does not belong to the realms of science-fiction, and makes the case for mainstreaming it. Similarly, [Manasa S Venkatachalam](#) reminds us that space law is no rocket science, discussing intellectual property rights in what is wrongly seen as an [“empty space”](#).

From outer space to Cyberspace, [Florian Kriener](#) brings us back to Earth, tackling another space that is easily forgotten because of its invisibility. The blogpost critically assesses Germany’s recent [position paper](#) on state sovereignty and international law in Cyberspace.

Just as the [song](#) goes, looking at the heavens brings us back to the deep blue sea, or, in less lyrical and more legal terms, questions of maritime delimitations. Two contributions deal with pending cases before the international Court of Justice: [Christoph Saake](#) comments the oral hearings in the [Case of Maritime Delimitation in the Indian Ocean](#) (Somalia v. Kenya) while [Arpita Goswami Sachdeva](#) explains why the [Case of Land and Maritime Delimitation and Sovereignty over Islands](#) (Gabon v. Equatorial Guinea) is not, primarily, about maritime delimitation.

The Völkerrechtsblog as a mirror of current challenges?

In some ways, this month's articles read like the legal *pendant* to [The Guardian](#), discussing the international law aspects of prominent news items such as the question of Sars-CoV-2 vaccination, climate change or the al-Khatib trials. Many of this month's contributions were linked to draft laws, policy papers or judgments that had been published only days before, and sometimes on the very same day, reflecting the tendency of an [ever-faster blog](#), as described in the last editorial. While the Völkerrechtsblog thus mirrors current issues, it has not lost sight of the "bigger picture", and its original mission of providing critical reflection and in-depth perspective, dealing not only with current developments, but analysing legal challenges from a critical distance. Symposia, such as the one on interstate applications and on the 70 years of the 1951 Refugee Convention are a particularly welcome occasion to combine news-worthy actuality with a deeper analysis of legal questions and challenges.

